



BFFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
J. A. AVILA)

For Appellant: Paul Bell

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of J. A. Avila against a proposed assessment of personal income tax and penalties in the total amount of \$1,129.50 for the year 1979.

Appeal of J. A. Avila

The sole question presented by this appeal is whether appellant has shown respondent's determination to be in error.

Respondent received information from 'the Employment Development Department (EDD) indicating that appellant was required to file a California personal income tax return for the year 1979. Having no record of appellant's filing of a return, respondent demanded that he file, Appellant failed to respond, and respondent issued a proposed assessment based on income information from EDD. Penalties were also imposed for failure to file a return and failure to file after notice and demand.

It is well settled that respondent's determinations of tax and the penalties imposed here are presumptively correct and that the taxpayer bears the burden of showing that such determinations are erroneous. (Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Aug. 17, 1982; Appeal of R. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.)

Appellant has presented no evidence to show that respondent's determinations of either tax or penalties were incorrect. Instead, he argues that he is statutorily and constitutionally exempt from paying tax and filing a return. Appellant's arguments are, unfortunately, all too familiar to us. We have been presented with the same statutory contentions time and time again, and have consistently held them to be totally meritless. (See, e.g., Appeal of Frank D. O'Neill, Cal. St. Bd. of Equal., June 29, 1982; Appeal of John K. Strode, Cal. St. Bd. of Equal., June 29, 1982; Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) With respect to the constitutional issues raised, we are precluded from determining them because of both article III, section 3.5 of the California Constitution and our own long-standing policy of abstention from deciding such issues in appeals involving deficiency assessments. (Appeals of Fred R. Dauberger, et al., supra.) We note, however, that the courts have consistently rejected these arguments as frivolous. (See cases cited in Appeals of Fred R. Dauberger, et al., supra.)

For the reasons stated above, respondent's action must be sustained.

Appeal of J. A. Avila

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of J. A. Avila against a proposed assessment of personal income tax and penalties in the total amount of \$1,129.50 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, **this** 17th day of August , 1983, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett - - _____, Chairman
Conway H. Collis _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins - - _____, Member
Walter Harvey * _____, Member

*For Kenneth Cory, per Government Code section 7.9